

REPRESENTATION FOR IMMIGRANTS: A JUDGE'S PERSONAL PERSPECTIVE

*Denny Chin**

Let me turn to my closing comments. I would like to do two things. First, I want to say a few words about the Katzmann¹ study group, and what a terrific endeavor it has been and will continue to be. Second, with all the discussion of the problems and difficulties that confront us in the immigration arena, I wanted to close on a positive note and, in particular, to offer a personal perspective.

So first, the Katzmann study group.

I am so grateful that I've been involved. We have been meeting for almost a year and, thanks to the leadership of Judge Robert A. Katzmann and Peter Eikenberry, we've assembled a wonderful group, unlike any that I've seen before. Although we do not have a formal membership, our meetings are attended by as many as forty people, or even more.

We have judges, including Immigration Judge Noel Brennan, who's been tremendously helpful with her knowledge of the inner workings of the immigration courts.

We've had private practitioners, some skilled and knowledgeable in immigration law² and some not. Both have contributed. We've had big-firm lawyers and solo practitioners. We've had private attorneys with extensive experience in pro bono programs.³

We've had academics, clinicians, legal aid providers, and grievance committee members.⁴

* U.S. District Judge for the Southern District of New York. I gave a version of these remarks at the 2009 Robert L. Levine Lecture, "Overcoming Barriers to Immigrant Representation: Exploring Solutions," on March 11, 2009. The remarks have been lightly edited, and I have added the footnotes. In addition, I have added to the text some additional information about my grandfather, which, as discussed below, I only recently acquired.

1. U.S. Circuit Judge for the U.S. Court of Appeals for the Second Circuit. Judge Robert A. Katzmann has spearheaded efforts to improve the quality of legal representation and the administration of justice in the immigration area. See Robert A. Katzmann, *The Marden Lecture: The Legal Profession and the Unmet Needs of the Immigrant Poor*, 21 GEO. J. LEGAL ETHICS 3 (2008).

2. In particular, Michael D. Patrick and his firm, Fragomen, Del Rey, Bernsen & Loewy, LLP, have been supportive of our efforts.

3. For example, the Public Service Committee of the Federal Bar Council, chaired by Peter K. Vigeland of WilmerHale, has worked closely with us in this respect.

4. The involvement of grievance committee lawyers is an important aspect of our endeavor. Many of the practitioners in the immigration area "render inadequate and incompetent service. . . . They undermine trust in the American legal system, with damaging consequences for the immigrants' lives." Katzmann, *supra* note 1, at 9; see also Aris v.

And all of us have come together for regular meetings, including some at 7:30 in the morning, to see if we could do something about the lack of good legal representation for immigrants. And I believe we are making progress. Despite our informal name, we are not just interested in studying the problems. We want to develop concrete measures and proposals that can be implemented so that people will be helped in real and measurable ways.⁵ This is not just a theoretical or academic endeavor, although many intriguing legal questions are presented.⁶ We want to take action and actually help. We believe we are uniquely qualified to do so because we

Mukasey, 517 F.3d 595, 600–01 (2d Cir. 2008) (Katzmann, J.) (holding that attorney in deportation proceeding failed to provide effective assistance). One aspect of our discussion is what steps can be taken to improve the quality of legal representation. Ironically, the grievance committees do not have jurisdiction over a significant segment of immigration service providers—nonattorney “notarios” and travel agencies that cater to, and sometimes victimize, poor immigrants who cannot find or afford an attorney. Katzmann, *supra* note 1, at 8 (“[A]necdotal evidence suggests that not all notarios and travel agents are competent or honest; travel agents often refer the immigrants to persons with whom they have relationships, but who are not licensed to practice law. These unauthorized practitioners, sometimes known misleadingly as ‘notarios,’ charge immigrants for their services in filing documents and preparing applicants for relief and benefits, but often lead the immigrants astray with incorrect information and terrible advice with lasting, damaging consequences that can fatally prejudice what otherwise would be a proper claim to entry.”). The district attorneys’ offices, however, have recently started addressing the issue, and the New York County District Attorney’s Office has started an Immigrant Affairs Program. *See, e.g.*, News Release, District Attorney—New York County (Aug. 6, 2009), <http://manhattanda.org/whatsnew/press/2009-08-6.shtml> (announcing arrest of two individuals for illegally practicing law and operating fraudulent immigration consulting business in Chinatown).

5. For example, with the recent downturn in the economy, law firms laid off or “furloughed” many attorneys and deferred offers to others. Our study group (with Peter L. Markowitz of the Immigration Justice Clinic at Benjamin N. Cardozo School of Law taking the lead) organized a meeting of immigration service providers to consider whether these attorneys could be tapped to provide pro bono assistance. As a result of these efforts, some twenty to thirty lawyers were placed, on a pro bono basis, with immigration service providers. Tom Shea of the New York Immigration Coalition has organized training for the attorneys. In addition, with our assistance, the Federal Bar Council Public Service Committee has embarked on an effort to provide pro bono screening and consultations for detained immigrants at the Varick Street Detention Facility, as well as to take on the representation of nondetained immigrants in their removal proceedings at 26 Federal Plaza. This is a collaborative effort: the member law firms of the Federal Bar Council are providing attorneys; the Legal Aid Society, Human Rights First, and other nonprofit service providers are providing training and supervision; the American Immigration Lawyers Association is providing mentoring; and Immigration Judge Noel Brennan is providing sage overall advice and encouragement.

6. For example, the long-standing debate continues over whether aliens have a constitutional right to counsel in immigration proceedings. It is well settled that they do not have a Sixth Amendment right to counsel in removal proceedings, which are deemed civil in nature. *See, e.g.*, Torres-Chavez v. Holder, 567 F.3d 1096, 1100 (9th Cir. 2009). But an alien’s right to due process may be implicated if, for example, an “egregiously deficient performance by the alien’s lawyer” “threatens the fairness of the proceeding.” *Id.* (quoting *Nehad v. Mukasey*, 535 F.3d 962, 971 (9th Cir. 2008)). Other legal issues arise, for example, with respect to the conditions of confinement of aliens in removal proceedings, including whether the detention is civil or criminal in nature.

have brought so many disparate interests together, we are not trying to compete with anyone, and collectively our only agenda is to improve the administration of justice in the immigration arena.

So again, I invite all of you to join us, to pitch in.

Let me close with a reminder that immigrants are a fundamental part of our heritage. To a great extent, we are a nation of immigrants.⁷ We don't want to lose sight of that fact.

I have now been a federal judge for fifteen years. I love my work, and I've had more than my share of high-profile and challenging cases.⁸ I almost didn't make it here this afternoon because I'm preparing for a hearing tomorrow in a case that has garnered just a little bit of attention.⁹

But one of the best things I do as a judge is to preside over the naturalization ceremony by which immigrants become American citizens. I've performed the ceremony many times now, and each time there are more than 200 immigrants from some fifty countries. Each time that I've performed the naturalization ceremony, I've told the new citizens about my grandfather, and I'll tell the story to you now, because the story is relevant to our discussion of immigration.

My grandfather died, at the age of eighty-one, when I was still in law school. He was born in China in 1896 and came to the United States in

7. See, e.g., *Mojica v. Reno*, 970 F. Supp. 130, 143 (E.D.N.Y. 1997) ("Ours is a nation of immigrants and their descendants. Except for the Native Americans whose ancestors were believed to have walked over the Bering Straits land bridge from Asia some twenty-five millennia ago . . . , all of us trace our genealogy to overseas forbears who arrived here within the past few hundred years.").

8. See, e.g., *Capobianco v. City of New York*, 422 F.3d 47 (2d Cir. 2005) (holding that night blindness was a disability for purposes of the Americans with Disabilities Act); *Conrad v. NBC Universal, Inc.*, 536 F. Supp. 2d 380 (S.D.N.Y. 2008) (denying in part and granting in part motion to dismiss claims brought by estate of prosecutor who committed suicide as he was about to be arrested for soliciting a minor in connection with filming for NBC television show *To Catch A Predator*); *Morales v. Portuondo*, 154 F. Supp. 2d 706 (S.D.N.Y. 2001) (granting habeas petition and ordering release of defendant who had been incarcerated for some twelve years after priest came forward to disclose confession by real murderer, who absolved defendant); *Million Youth March, Inc. v. Safir*, 63 F. Supp. 2d 381 (S.D.N.Y. 1999) (ordering City of New York to issue parade permit to organizers of march, where City had denied permit on grounds leader of group had made racist statements in the past); *Doe v. Pataki*, 940 F. Supp. 603 (S.D.N.Y. 1996) (addressing constitutionality of Megan's Law, the New York sex offender statute), *aff'd in part and rev'd in part*, 120 F.3d 1263 (2d Cir. 1997).

9. On March 12, 2009, the day after the Levine Lecture, I took the guilty plea of Bernard L. Madoff, who was charged with securities fraud and related crimes in what has been described as "Wall Street's biggest and longest fraud." Diana B. Henriques & Jack Healy, *Madoff Jailed After Pleading Guilty to Fraud*, N.Y. TIMES, Mar. 13, 2009, at A1; see, e.g., *United States v. Madoff*, 316 F. App'x 58 (2d Cir. 2009) (affirming district court's decision to remand defendant pending sentencing); *United States v. Madoff*, 626 F. Supp. 2d 420 (S.D.N.Y. 2009) (granting in part and denying in part media's motion to unseal emails and letters from victims and other documents). I eventually sentenced Madoff to a term of imprisonment of 150 years. See, e.g., Diana B. Henriques, *Madoff, Apologizing, Is Given 150 Years*, N.Y. TIMES, June 30, 2009, at A1.

1916; I was never quite sure how he got into the country, because of the Chinese exclusion laws that were on the books then.¹⁰ Recently, however, I asked my father, and he told me, in Chinese, that my grandfather had “bought paper” to enter the United States. This confirmed my longstanding suspicion that my grandfather was a “paper son”—that he had entered the United States illegally.¹¹

Recently, I learned some additional information about my grandfather because I was able to obtain my grandfather’s naturalization petition.¹² He filed the petition in my court, the U.S. District Court for the Southern District of New York, on May 5, 1947. The petition was witnessed by two men, who identified themselves as a “laundry man” and a “waiter,” respectively. I had always known that my grandfather had returned to China in the 1930s, when my father was born, but I did not know the details, and I did not know that he had actually returned twice.

10. See Chinese Exclusion Act, ch. 126, 22 Stat. 58, 58–61 (1882) (repealed 1943). There were a series of Chinese exclusion statutes from 1882 to 1892. See Act of May 6, 1882, ch. 126, 22 Stat. 58 (repealed 1943) (executing certain treaty stipulations relating to Chinese); Act of July 5, 1884, ch. 220, 23 Stat. 115 (repealed 1943) (amending treaty stipulations relating to Chinese); Act of Oct. 1, 1888, ch. 1064, 25 Stat. 504 (repealed 1943) (supplementing prior treaty stipulations); Act of May 5, 1892, ch. 60, 27 Stat. 25 (repealed 1943) (prohibiting the immigration of Chinese). The 1882 act was the first congressional restriction on immigration. See Louis Henkin, *The Constitution and the United States Sovereignty: A Century of Chinese Exclusion and Its Progeny*, 100 HARV. L. REV. 853, 856 n.12 (1987). The U.S. Supreme Court upheld Chinese exclusion acts in *Chae Chan Ping v. United States*, 130 U.S. 581 (1889), and again in *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

11. In the face of the Chinese Exclusion laws, in the early 1900s many Chinese sought to enter the United States by taking advantage of certain limited exceptions. One loophole enabled children of U.S. citizens who were born outside the United States to enter the United States, and thus U.S. citizens of Chinese descent were able to bring in “paper sons” who pretended to be their offspring to gain entry. See Estelle T. Lau, *Excavating the “Chinese Wall”: Towards a Socio-Historical Perspective on the Development of United States Immigration Administration and Chinese Exclusion*, 92 NW. U. L. REV. 1068, 1076–77 (1998). The great San Francisco earthquake of 1906 destroyed many public records relating to the Chinese in the United States, and the loss of these records enabled many Chinese to be able to claim that they were born in the United States and therefore were entitled to bring their children into the country. *Id.* at 1076 n.13. Usually, male children were brought in—hence the term “paper sons.” *Id.* at 1077 n.14. After the loopholes were tightened, however, the largely male Chinese populations were unable to bring their families to the United States to join them until after the immigration laws were relaxed in the mid-1960s.

12. On May 14, 2009, I spoke on Ellis Island to a gathering of federal employees. I talked about my grandfather and mentioned that I did not know how he had been able to enter the United States in 1916. After my speech, I was approached by Nancy M. Shader, the Director of Archival Operations of the Northeast Region of the National Archives, who kindly offered to help me find my grandfather’s original paperwork. Just two-and-a-half weeks later, she emailed me my grandfather’s naturalization petition. See Petition for Naturalization, Chin Doo Teung (May 5, 1947) (reproduced following these remarks). I am grateful to her, because the petition provides certain information I had not previously known.

My grandfather entered the United States at the port of Seattle, Washington on November 16, 1916, on the S.S. Ixion.¹³ He was twenty years old. On November 11, 1925, he returned to China, departing from Seattle on the S.S. President Jackson.¹⁴ The petition shows that just a few weeks later, on December 2, 1925, he got married.¹⁵ He did not remain with his new wife for long, however, as he returned to Seattle less than a year later, on the S.S. President Grant, arriving in Seattle on October 2, 1926.¹⁶ On September 16, 1933, my grandfather made his second trip back to China, departing from Seattle on the S.S. President Jackson.¹⁷ While he was in China, my father was born. My grandfather then returned to Seattle, on the S.S. President Jefferson, arriving on August 20, 1935.¹⁸ He had no choice but to leave his family—including my father, who was only about a year old—behind.

My grandfather worked as a waiter for many years in Chinese restaurants in New York City. He lived in a railroad apartment in Chinatown with other Chinese men who also were without their families. Because of the immigration laws, they could not bring their families to the United States. Each month my grandfather would buy a money order at the post office and send it home to his family in China.

In 1947, after filing his naturalization petition, my grandfather became a U.S. citizen—in my court, the Southern District of New York. I have his naturalization certificate, issued on June 9, 1947, hanging on the wall in my chambers at the courthouse. By becoming a citizen, he was able eventually to bring his family, including me, to this country.¹⁹

My parents had moved from China to Hong Kong, fleeing the communist regime. My mother and father met in Hong Kong. They married there, at a young age, and my sister, my brother, and I were born. My parents' original Chinese passports show that we were admitted to the United States in 1956 under the Refugee Relief Act of 1953.²⁰ After we arrived in New

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. My grandfather's naturalization petition represented that he had three children, including my father. I had never heard that my father had any siblings, and so I asked my father about this recently after I received the copy of my grandfather's petition. My father explained that my grandfather was laying the groundwork, in effect, to commit immigration fraud: by claiming two other children, my grandfather was hoping that someday he would be able to bring to the United States not just my father but two others as well (such as my father's cousins) on the pretense that they were also his children. In fact, he never followed through on this plan.

20. Pub. L. No. 83-203, 1953 U.S.C.A.N. (67 Stat. 400) 444; *see also* Cheng Lee King v. Carnahan, 253 F.2d 893, 895 (9th Cir. 1958) (holding that Refugee Relief Act of 1953 "was enacted to provide for the admission of refugees (recent escapees) who had fled from

York, my parents had two more children, and they worked hard raising five kids. My mother worked as a seamstress in garment factories in Chinatown. For many years my father was a cook in Chinese restaurants.

In 1967, my parents were naturalized—again, in my court—and, thus, I became a citizen as well.²¹

So each time that I perform the naturalization ceremony, I tell the new U.S. citizens about my grandfather. I show them my grandfather's naturalization certificate, which I take off the wall, frame and all.

And when I show it to them, I think of my grandfather, of how hard he worked for so many years waiting on tables, of how he became a citizen in 1947, of how he brought my parents into the country, of how they became citizens, and of how I, the son of a seamstress and Chinese cook, the grandson of a Chinese waiter, became a federal judge.

All of you have someone like my grandfather in your pasts, in your family histories. Whether you are Asian-American, or Irish-American, or African-American, or something else—all of you have someone in your pasts like my grandfather and my parents.

I know that I would not be here today if my grandfather and my parents and others like them had not led the way for me, had they not overcome the many barriers they faced.

They were able to pave the way for me because of our history, our legacy of welcoming immigrants to this country. And they were able to overcome the barriers they faced because they had help from charitable organizations, churches, not-for-profits, governmental agencies, and lawyers.

There are many out there now who need our help, who need your help.

Let's give it to them.

Thank you very much.

Communist territory and were in camps or in desperate condition in the countries to which they escaped"). The bill provided for the issuance of some 240,000 visas to refugees. *Id.*

21. Because I was under eighteen when my parents were naturalized and had been lawfully admitted to the United States with a green card, I became a citizen derivatively, by operation of law. *See* 8 U.S.C. § 1431(a) (2006) (child born outside United States automatically becomes U.S. citizen when at least one parent is U.S. citizen, by birth or naturalization, child is under age eighteen, and child is residing in United States in lawful custody of citizen parent pursuant to lawful admission for permanent residence).

ORIGINAL (To be retained by Clerk of Court)

UNITED STATES OF AMERICA

No. 555811

PETITION FOR NATURALIZATION [Under General Provisions of the Nationality Act of 1940 (Public, No. 853, 76th Cong.)]

U.S. District, Southern District, New York, N.Y.

To the Honorable the Court of

This petition for naturalization, hereby made and filed, respectfully shows:

(1) My full, true, and correct name is CHIN DOO TEUNG also known as CHIN KUNG KWOK

(2) My present place of residence is 306 West 44th St., New York, N.Y. My occupation is Teacher

(4) I am 50 years old. (5) I was born on September 15, 1896 in Tai Won, Canton, China

(6) My personal description is as follows: Sex male, color yellow, complexion red, color of eyes black, color of hair black

height 5 feet 7 inches, weight 145 pounds, visible distinctive marks on chin, race Chinese

present nationality China (7) I am married; the name of my wife or husband is Moy Shee

we were married on December 2, 1925 at Canton, China

who was born at Hong Sun, Canton, China on May 15, 1908

and entered the United States at Seattle, Washington on August 15, 1916

and now resides at China and was naturalized on

at certificate No. and became a citizen by

(8) I have 3 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

Chin Bakh Tong (m) November 14, 1926; Chin Bakh Thuen (m) June 2, 1924; Chin Sue

Hun (f) October 10, 1935; all born and res. China

(9) My last place of foreign residence was Tai Won, New Village, China

Hong Kong, China (10) I emigrated to the United States from

at Seattle, Washington under the name Chin Doo Teung

on November 18, 1916 on the SS "Ixion"

as shown by the certificates of my arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

Table with 2 columns: DEPARTED FROM THE UNITED STATES and RETURNED TO THE UNITED STATES. Rows include dates and vessel names like SS 'Pres. Grant' and SS 'Pres. Jefferson'.

(13) I declared my intention to become a citizen of the United States on February 10, 1945 in the U.S. DISTRICT

Court SOUTHERN DISTRICT NEW YORK, NY (14) It is my intention in good faith to become a

citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty of whom or which at

this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15) I am not, and have not been for the period of at least 10 years

immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in

or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbeliefs in or opposition to organized government.

(16) I am able to speak the English language (unless physically unable to do so). (17) I am, and have been during all of the periods required by law, attached to the

principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (18) I have resided continuously in the

United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since November 16, 1916

and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition, to wit, since

December, 1916 (19) I have not heretofore made petition for naturalization; No.

on at in the Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit:

and the cause of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my petition for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration

of intention be required by the naturalization law), a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United

States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own

knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is

signed by me with my full, true name: SO HELP ME GOD.

CHIN DOO TEUNG

Form No. 140B (CITIZENSHIP) U.S. DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE (EXPIRES 12-31-40)

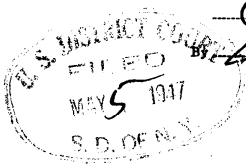
AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Fong Wing Chin, my occupation is laundry man
I reside at 202 2 6th St., NY, NY
My name is Yih Ghee Lee, my occupation is waiter
I reside at 214 Canal St., NY, NY

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with CHIN DOO TSEING
the petitioner named in the petition for naturalization of which this affidavit is a part, since May 1, 1942
to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and at New York continuously since May 1, 1942
I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: SO HELP ME GOD.

Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of the Clerk of said Court at New York, NY this 5th day of May Anno Domini 1947
I hereby certify that Certificate of Arrival No. 500 K 56647 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, together with Declaration of Intention No. 654768 of such petitioner, has been by me filed with, attached to, and made a part of this petition on this day.



Edmund J. Byrnes Clerk
Deputy Clerk

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: SO HELP ME GOD. In acknowledgment whereof I have heretofore affixed my signature.

Sworn to in open court, this 15th day of June 1947
By Edmund J. Byrnes Deputy Clerk

NOTE-In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or title) which I have heretofore held," or "I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged."

Petition granted: Line No. 2982 of List No. 17171 and Certificate No. 6788212 issued.
Petition denied: List No.
Petition continued from to Reason